

TEXT OF PROPOSED REPEAL OF REGULATIONS

In the following proposed regulation strikethrough indicates deleted and repealed text.

Subchapter 7. Parole Hearings Division

Article 1 through Article 4, Section 3901.7.3 are repealed.

~~Article 1. Public Attendance at Parole Hearings~~

~~3901.1.1. Visitors and Observers at Parole Hearings.~~

~~—Visitors and observers may attend individual case hearings if prior permission has been obtained from the parole hearings division's deputy director, chief administrative hearing officer, or senior administrative hearing officers, or the administrative hearing officer assigned to hear the case subject to the authority of the hearing panel to exclude visitors and observers upon the request of the prisoner or parolee or upon the panel's own motion. Attendance may be permitted only for educational or informational purposes. Persons having a personal interest in the case shall disclose that interest when requesting permission to attend. Visitors and observers may not participate in the hearing except to review written records as permitted by law.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section Penal Code; and Section 11120, Government Code.~~

~~3901.1.2. Media Representatives Attendance at Parole Hearings.~~

~~—Representatives of the media may attend revocation and revocation extension hearings. Requests to attend a particular hearing shall be submitted to the deputy director, parole hearings division, no later than three working days before the hearing. The deputy director, parole hearings division, shall determine the number of media representatives who may attend the hearing after considering the custody and security requirements of the department and the space reasonably available at the location and the recommendations of the assistant director, communications.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056 and 3057, Penal Code; and Section 11126, Government Code.~~

~~Article 2. Parole Hearing Panel Decisions~~

~~3901.3.1. Effective Date and Review of Parole Hearing Panel Decisions.~~

~~—(a) General. Unless the panel specifies otherwise, decisions shall be effective on the date signed by the panel and shall be immediately implemented by the parole and community services division or institutions division. The decision may be reviewed by the persons designated in subsection (c). If the reviewer disapproves the decision and orders a new hearing, the parolee shall be notified, and, if necessary, the parole agent shall place a hold following the criteria of section 3901.17.2. If the reviewer modifies the decision without a new hearing, the parole agent shall implement the modified decision immediately.~~

~~—(b) Modification Adverse to Subject. No decision shall be modified without a new hearing if the modification would be adverse to the parolee or prisoner's interest.~~

~~—(c) Decision Reviewer. Decisions may be reviewed by the parole hearings division's chief administrative hearing officer or a senior administrative hearing officer, or by an administrative hearing officer designated by the deputy director, parole hearings division.~~

~~—(d) Review Procedure. The reviewer may approve the decision as rendered, order a new hearing, or modify the decision without a hearing.~~

~~—(e) Review Criteria. The purpose of the decision review process is to assure complete, accurate, consistent and uniform decisions. Criteria for disapproval or modification of a decision include clerical errors, apparent inconsistency of result from results generally obtained for the same or similar cases,~~

~~incorrect application of the law or regulations, a decision not supported by the findings, findings not supported by the evidence on the record, or a unique or unusual policy issue posed by the proposed decision. The reviewer shall review the information available to the panel that made the decision and any relevant reliable information received by the division subsequent to the hearing.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056 and 3057, Penal Code.~~

Article 3. Parole Hearings Division Appeals

3901.5.1. Parole Hearing Appeal Procedures.

~~-(a) Any person under the parole hearings division's jurisdiction may appeal any decision of the parole hearings division which affects that person, except a decision to schedule a hearing or the denial of an appeal by the second level reviewers. The denial of a request for a subpoena or a subpoena duces tecum or the denial or granting of a request to quash a subpoena or subpoena duces tecum shall not be appealed until after the parole revocation or extension hearing (section 3901.25.8). An attorney may file an appeal on behalf of a prisoner or parolee if authorized by the prisoner or parolee. An appeal filed by an attorney shall include a signed authorization from the prisoner or parolee permitting the attorney to file the appeal on his/her behalf and an acknowledgment that the prisoner or parolee has received a copy of all documents filed with the first level reviewer.~~

~~-(b) No regularly scheduled hearing shall be delayed pending the decision on an appeal. If a favorable decision on appeal may affect a regularly scheduled hearing every effort shall be made to process the appeal prior to the hearing.~~

~~-(c) The time limits specified in this article are directory only and may be extended if the chief administrative hearing officer determines the extension is not likely to prejudice the prisoner or parolee.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

3901.5.2. General Grounds for Parole Hearing Appeals.

~~-(a) The decision was based on incorrect or incomplete information which, if correct or complete, might have resulted in a different decision.~~

~~-(b) An error of judgment led to a decision which is unreasonable in view of the facts.~~

~~-(c) The decision is illegal because the parole hearings division did not have the legal authority to make the decision.~~

~~-(d) The decision violates these regulations.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

3901.5.3. Filing a Parole Hearing Appeal.

~~The prisoner or parolee has the following responsibility in filing any appeal:~~

~~-(a) Contents of the Appeal:~~

~~-(1) Specific grounds must be stated and all necessary documents and information should be attached to the application.~~

~~-(2) All grounds must be included in the same appeal.~~

~~-(3) The decision desired must be stated.~~

~~-(b) Assistance. Assistance in preparing the appeal may be sought from staff or others.~~

~~-(c) Submitting the Appeal. The appeal shall be submitted to the department appeals coordinator within 90 days of receipt of written confirmation of the decision.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

3901.5.4. Parole Hearings Division Appeals Unit Decisions.

~~The parole hearings division appeals unit may make the following decisions:~~

~~-(a) Order a New Hearing. Place the matter directly on the appropriate calendar if a factual error or omission of consequence is confirmed, an error of judgment appears to have occurred, or the decision appears to be illegal. Reasons for this action shall be stated. When possible, none of the persons who made~~

~~the decision being appealed shall be on the new hearing panel. The new hearing should be held within 60 days of the parole hearings division appeals unit's decision. The regional or institution hearing coordinator shall report delays beyond 60 days to the parole hearings division appeals unit with the reasons for the delay. Following a new hearing, a copy of the new decision shall be forwarded to the parole hearings division appeals unit.~~

~~-(b) Deny. Deny the appeal if the decision is within established parole hearings division policy, any factual error was harmless or the decision was reasonable under the circumstances of the case. The decision shall document the reasons for denial and include specific citation of policy. Any factual error discovered must be corrected even if it is minor (insufficient to warrant a different decision) and the appeal is denied.~~

~~-(c) New Decision. Make a new decision if no new hearing is required and the decision will not adversely affect the prisoner or parolee.~~

~~-(d) Dismiss. Dismiss the appeal if it should be handled through the department's inmate and parolee appeals system (section 3084, et seq.), if the parole hearings division has no jurisdiction over the issues being appealed, if the appeal is premature or if the appeal was filed more than 90 days after the prisoner or parolee received written confirmation of the decision.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

~~3901.5.5. Attorney Determination Appeals.~~

~~-If the department denies a prisoner's or parolee's request for an attorney, the prisoner or parolee may request parole hearings division review of that decision. If the prisoner or parolee requests review, appropriate department staff shall telephone the parole hearings division appeals unit for a decision concerning an attorney.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

~~3901.5.6. Expedited Parole Hearing Division Appeals.~~

~~-(a) General. A prisoner, parolee or attorney may request that an appeal be expedited when the outcome of the appeal may substantially affect a pending decision by an administrative or judicial agency or when there is a specific need for an immediate decision.~~

~~-(b) Filing. The prisoner, parolee or attorney shall file the appeal including documentation of the reasons for requesting an immediate decision with the parole hearings division appeals coordinator.~~

~~-(c) Parole Hearings Division Appeals Coordinator. The parole hearings division appeals coordinator shall determine whether there is a need for an immediate decision. If the appeals coordinator determines the appeal does not require an immediate decision, the parole hearings division appeals coordinator shall handle the appeal as provided in section 3901.5.4. If the appeals coordinator determines the appeal should be expedited, the appeal should be processed as soon as possible.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

Article 4. Multijurisdiction Regulations

~~3901.7.1. Application of Regulations to Multijurisdiction Prisoners and Parolees.~~

~~-All department regulations shall apply to all multijurisdiction prisoners and parolees unless modified by specific multijurisdiction rules.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

~~3901.7.2. Determination of Multijurisdiction Status.~~

~~-(a) For the purpose of determining whether the multijurisdiction rules apply to a prisoner or parolee, the determinative factor shall be the individual's custody or parole status as of the date any parole hearings division action is taken, or the date of the assertion of a right.~~

~~-(b) Examples of "parole hearings division actions" are:~~

~~-(1) The scheduling of a hearing.~~

~~-(2) Notification of a hearing or parole hearings division decision.~~

~~-(3) A hearing.~~

- ~~-(4) A decision made without a hearing.~~
- ~~-(e) Examples of "assertion of a right" are:~~
 - ~~-(1) An attorney request.~~
 - ~~-(2) A central file review request.~~
 - ~~-(3) An appeal.~~
 - ~~-(4) A hearing request.~~
 - ~~-(5) A rehearing request.~~
- ~~-(d) The multijurisdiction rules shall apply to any prisoner or parolee who becomes a multijurisdiction prisoner or parolee subsequent to any parole hearings division action or to the assertion of any right. The multijurisdiction regulations shall no longer apply to a prisoner or parolee if the prisoner's or parolee's multijurisdiction status terminates subsequent to any parole hearings division action or to the assertion of any right.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056 and 3057, Penal Code.

~~3901.7.3. Appeals for Multijurisdiction Prisoners and Parolees.~~

~~Any multijurisdiction prisoner or multijurisdiction parolee may appeal any decision of the parole hearings division which affects him or her, except a decision to order a hearing scheduled or a decision to deny an appeal. Such appeals shall be submitted, reviewed and decided upon as provided in sections 3901.5.1-6 except as modified in this article. Decisions and procedures of the corrections and parole authorities of incarcerating jurisdictions must be appealed according to the procedures of such jurisdictions, unless any procedures were employed at the request of the parole hearings division or any decisions form the basis of any parole hearings division action.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code. \E

Sections 3901.9.2 through 3901.9.3 are repealed.

~~3901.9.2. Notice of Parole.~~

- ~~-(a) Definition. The notice of parole is a general description of rules and regulations governing parolees.~~
- ~~-(b) Notice. The notice of parole shall read as follows:~~
 - ~~-(1) Release. You will be released on parole effective _____ for a period of .This parole is subject to the following notice and conditions. Should you violate any conditions of this parole, you are subject to arrest and the parole hearings division may modify, suspend, or revoke your parole and/or order your return to custody. You have read or have had read to you these conditions of parole and you fully understand them. Whenever any problems arise or you do not understand what is expected of you, talk to your parole agent.~~
 - ~~-(2) Extradition. You waive extradition to the State of California from any state or territory of the United States, or from the District of Columbia. You will not contest any effort to return you to the State of California.~~
 - ~~-(3) Psychiatric Returns. If the parole hearings division determines that you suffer from a mental disorder which substantially impairs your ability to maintain yourself in the community or which makes you a danger to yourself or others, the parole hearings division may order your placement in a community treatment facility or state prison, if necessary for treatment. The parole hearings division may revoke your parole and order you returned to prison for psychiatric treatment if the necessary treatment cannot be provided in the community.~~
 - ~~-(4) Search. You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer.~~
 - ~~-(5) Detainer. If another jurisdiction has lodged a detainer against you, you may be released to the custody of that jurisdiction. Should you be released from their custody prior to the expiration of your California parole, or should the detainer not be exercised, you are to immediately contact the nearest parole and community services division office for instructions concerning reporting to a parole agent.~~
 - ~~-(6) Residence. The establishment and maintenance of a residence upon release from prison is critical to the successful reintegration of a parolee into society and is in the interest of the public.~~

~~-(7) Certificate of Rehabilitation. You have been informed and have received in writing the procedure for obtaining a Certificate of Rehabilitation.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056, 3057, 3060, and 5077, Penal Code.~~

~~3901.9.3. General Conditions of Parole.~~

~~-(a) The parole conditions are not a contract but are the specific rules governing all parolees whether or not the parolee has signed the form containing the parole conditions. A violation of any of these conditions of parole may result in the revocation of parole and the parolee's return to prison. The general conditions of parole shall read as follows:~~

~~-(1) Special conditions. Any special condition imposed by the department.~~

~~-(2) Release, Reporting, Residence and Travel. Unless other arrangements are approved in writing, you will report to your parole agent within 24 hours or the next working day if released on the day before a holiday or weekend. Your residence and any change of residence shall be reported to your parole agent in advance. You will inform your parole agent within 72 hours of any change of employment location, employer or termination of employment.~~

~~-(3) Parole Agent Instructions. You shall comply with all instructions of your parole agent and will not travel more than 50 miles from your residence without his/her prior approval. You will not be absent from your county of residence for a period of more than 48 hours and not leave California without prior written approval of your parole agent.~~

~~-(4) Criminal Conduct. You shall not engage in conduct prohibited by law. You shall immediately inform your parole agent if you are arrested for a felony or misdemeanor crime.~~

~~-(5) Weapons. You shall not own, use, have access to, or have under your control any of the following:~~

~~-(A) Any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm.~~

~~-(B) Any weapon as defined in state or federal statutes or listed in Penal Code section 12020 or any instrument or device which a reasonable person would believe to be capable of being used as a weapon as defined in Penal Code section 12020.~~

~~-(C) Any knife with a blade longer than two inches, except kitchen knives which must be kept in your residence and knives related to your employment which may be used and carried only in connection with your employment.~~

~~-(D) A crossbow of any kind.~~

~~-(6) You shall sign the parole agreement containing the conditions of parole specified in this section and any special conditions imposed as specified in section 3901.9.4.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3060, 3060.5, and 12020, Penal Code.~~

Sections 3901.9.5 through 3901.9.6 are repealed.

~~3901.9.5. Waiver of Parole.~~

~~-The parole hearings division may, for good cause, waive parole and discharge any prisoner. Except those who meet the criteria set forth in Penal Code section 2962, a prisoner sentenced pursuant to Penal Code section 1170 or the department may request waiver of parole pursuant to section 3901.11.1.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3000, Penal Code.~~

~~3901.9.6. Length of Parole.~~

~~-(a) The parole hearings division shall discharge a parolee under its jurisdiction within 30 days following one year on continuous parole unless it finds good cause to retain the individual on parole. A parole period is not continuous if parole is revoked or the parolee absconds during that period (see section 3901.13.1(b)(2)). Any time during which a parolee absconded from supervision or during a period of revocation shall not be credited to the period of parole. The period of parole may be extended pursuant to revocation proceedings. The parole period shall be extended for an amount of time equal to that served by~~

~~the parolee in revocation status. The extension of the period of parole pursuant to revocation shall not exceed the maximum period of parole.~~

~~-(b) Prisoners under parole hearings division jurisdiction whose offenses were on or after January 1, 1979 are subject to a three year period of parole unless the parole hearings division sets a shorter period. The maximum period of parole is four years.~~

~~-(c) Prisoners under parole hearings division jurisdiction whose offenses were on or before December 31, 1978 are subject to a one year period of parole unless the parole hearings division sets a shorter period. The maximum period of parole is 18 months.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3000, Penal Code.~~

Articles 6 through 8 are repealed.

Article 6. ~~Reconsideration of Length and/or Conditions of Parole~~

3901.11.1. ~~Filing for Reconsideration of Length and/or Conditions of Parole.~~

~~-(a) Prisoners whose length and/or conditions of parole were established by the department shall first appeal through the department's appeal procedures in sections 3084, et seq. When the department appeal is final, the prisoner may request parole hearings division review by following the procedures in sections 3901.5.1-.6.~~

~~-(b) A prisoner or parolee objecting to the decision after reconsideration may appeal the decision under the procedures of sections 3901.5.1-.6.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000 and 5077, Penal Code.~~

Article 7. ~~Discharge~~

3901.13.1. ~~Discharge Review.~~

~~-(a) General. At the discharge review the parole hearings division shall consider the parolee's adjustment in prison and on parole and any other information relevant to determining whether the parolee should be discharged or retained under parole supervision.~~

~~-(b) Scheduling.~~

~~-(1) This review shall be performed by the 13th month of continuous parole for parolees who were not imprisoned for committing a violent felony as defined in Penal Code section 667.5(c). The review shall be completed by the 25th month of continuous parole for parolees who were imprisoned for committing a violent felony as defined in Penal Code section 667.5(c).~~

~~-(2) A parolee has been on continuous parole if the parolee has not absconded parole supervision or had parole revoked since release on parole after serving a term of imprisonment or period of revocation. A parolee has not been on continuous parole if he/she has been ordered returned to custody for psychiatric treatment.~~

~~-(3) Non-lifer parolees who were sentenced for offenses committed on or after July 1, 1977, but on or before December 31, 1978, shall not be scheduled for discharge review hearings. These parolees will discharge after one year on parole or at the expiration of the maximum period of parole (see section 3901.9.6).~~

~~-(c) Prisoner Rights. The prisoner does not have a right to a personal appearance during the review. The parolee shall receive a copy of the parole hearings division's decision, including the reasons for a decision not to discharge the parolee. The parolee may appeal a refusal to discharge as provided in sections 3901.5.1-.6. If the parole hearings division does not discharge the parolee, it shall review the case annually thereafter until discharge. Subsequent reviews shall be performed as provided in this section.~~

~~-(d) Criteria. Factors tending to indicate there is a good cause to retain a parolee on parole include:~~

~~-(1) Commitment Offense. The parolee was committed to prison for several offenses, for an offense involving weapons or great bodily harm, for an offense which was part of large scale criminal activity or for an offense which caused considerable concern in the local community.~~

~~-(2) Institutional Adjustment. While in prison the parolee was involved in serious gang activities or in general acts of violence.~~

~~-(3) Parole Adjustment. While on parole the parolee has been involved in criminal activity even if that activity did not result in revocation of parole, has been using drugs, has been involved in gang activities, is currently undergoing criminal prosecution or is being investigated for possible prosecution.~~

~~-(4) Placement Returns. The parolee has been returned to custody for substance abuse or psychiatric treatment.~~

~~-(5) Supervision Needed. The parolee is in special need of continued supervision for the safety of the parolee or of the public.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000 and 3001, Penal Code.

~~3901.13.2. Early Discharge.~~

~~A prisoner or parolee may request a period of parole shorter than the period of parole specified in section 3901.9.6. The prisoner or parolee may request a shorter period of parole from the department and may request subsequent review by the parole hearings division (see section 3901.11.1). The parole hearings division may grant an early discharge upon its own motion.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 2000, Penal Code.

~~3901.13.3. Statutory Discharge.~~

~~If a parolee has not been discharged under section 3901.13.1 or 3901.13.2, the parolee shall discharge after serving the maximum period of parole specified in section 3901.9.6.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3000, Penal Code.

Article 8. Multijurisdictional Regulations

~~3901.15.1. Conditions of Multijurisdiction Parole.~~

~~-(a) Concurrent Parolees. All concurrent and California concurrent parolees may also have parole conditions established by the authorities of the incarcerating jurisdiction in addition to the California Notice and Conditions. Only the authorities of the incarcerating jurisdiction can modify the parole conditions they have established for concurrent and California concurrent parolees.~~

~~-(b) Cooperative Parolees. Cooperative parolees shall be supervised in the receiving state by the authorities of the receiving state according to the same standards which prevail for its own parolees.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056, 3057, and 11175, Penal Code.

~~3901.15.2. Reconsideration of Multijurisdiction Length and Conditions of Parole.~~

~~-(a) Parole Hearings Division Established Length and Conditions of Parole. For multijurisdiction prisoners and multijurisdiction parolees whose length and conditions of parole were set by the parole hearings division, reconsideration shall be by appeal as provided in sections 3901.7.3-4. For multijurisdiction prisoners who are released to supervision in a California community, reconsideration shall be by appeal as provided in sections 3901.5.1-6.~~

~~-(b) Department Established Length and Conditions of Parole. Multijurisdiction prisoners and parolees whose length and conditions of parole were set by the department must first appeal the department's decision through the department appeal process (see section 3084, et seq.). The parole hearings division will not consider the request until the department appeal is final. When the department appeal is final the prisoner may request parole hearings division reconsideration of the department established length and conditions of parole. For multijurisdiction prisoners who are released to supervision in a California community, parole hearings division reconsideration of a department set length and/or condition of parole shall be as specified in sections 3901.11.1.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056, 3057, and 11175, Penal Code.

~~3901.15.3. Filing the Request for Multijurisdiction Reconsideration.~~

~~The multijurisdiction prisoner or parolee must file the request for reconsideration within 30 days of notice of the department's final decision. The request shall be prepared as specified in section 3901.11.1.~~
NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056, 3057, and 11175, Penal Code.

~~3901.15.4. Submitting Multijurisdiction Reconsideration Request.~~

~~The multijurisdiction prisoner or parolee shall submit the request to the person responsible for the prisoner's or parolee's first level of appeal as provided in section 3901.7.4. Department staff shall log the appropriate information when the request is received. This information shall include the name and number of the person filing the request, the date the request was received, and the date the request was forwarded to the parole hearings division.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056, 3057, and 11175, Penal Code.

~~3901.15.5. Right to Multijurisdiction Appeal.~~

~~A multijurisdiction prisoner or parolee objecting to the decision on reconsideration may appeal the decision as provided in section 3901.7.4.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056, 3057, and 11175, Penal Code.

Sections 3901.17.6 through 3901.17.7 are repealed.

~~3901.17.6. Return to Prison.~~

~~Emergency Return: Psychiatric Treatment. A parolee may be returned to prison on an emergency basis if he/she is alleged to be an individual described in section 3901.19.2(a)(7) and if he/she cannot receive necessary psychiatric treatment pending a hearing, as certified in writing by the parole and community services division.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3056, Penal Code.

~~3901.17.7. Length of Parole Hold.~~

~~(a) Parolee Whose Offense Was Committed On or Before December 31, 1978. If the offense for which the parolee was committed to prison occurred on or before December 31, 1978, the parole hold shall not remain in effect for longer than six months.~~

~~(b) Parolee Whose Offense Was Committed On or After January 1, 1979. If the offense for which the parolee was committed to prison occurred on or after January 1, 1979, the parole hold shall not remain in effect or longer than one year.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3057, Penal Code.

Subchapter 7, Article 11, Sections 3901.21.1 through 3901.21.2 are repealed.

~~Article 11. Revocation Procedures~~

~~3901.21.1. Location of Revocation Hearings.~~

~~All revocation hearings should be held in the community near where the alleged violation occurred.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056 and 3057, Penal Code.

~~3901.21.2. Revocation Period.~~

~~-(a) General. Any time served pursuant to revocation of parole shall be added to the period of parole not to exceed the maximum period of parole specified in section 2515. The revocation periods specified in this section apply if the parolee has not received a new commitment to prison.~~

~~-(b) Parolee Whose Offense Was Committed On or Before December 31, 1978. If the offense for which the parolee was committed to prison occurred on or before December 31, 1978, confinement pursuant to parole revocation shall not exceed six months. Time in custody on a parole hold prior to the revocation hearing shall be credited to the revocation period.~~

~~-(c) Parolee Whose Offense Was Committed On or After January 1, 1979. If the offense for which the parolee was committed to prison occurred on or after January 1, 1979, confinement pursuant to parole revocation shall not exceed one year. Time in custody on a parole hold shall be credited to the revocation period.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000, and 3057, Penal Code.

Sections 3901.21.4 through 3901.21.17 are repealed.

~~3901.21.4. Central Office Calendar.~~

~~-(a) General. The parole hearings division at the central office calendar shall review the conduct and progress of parolees and consider parolees for the scheduling of revocation proceedings.~~

~~-(b) Decisions. The parole hearings division at the central office calendar may make any decisions that do not require hearings. Examples of central office calendar decisions include:~~

~~-(1) To Suspend Parole Pending Further Determination. This decision shall be used for parolees who have absconded.~~

~~-(2) To Issue Warrants. This decision shall be used following suspension of parole for parolees who have absconded parole and any other time a law enforcement agency requires a warrant to support the arrest of a parolee.~~

~~-(3) To Order Return to Prison for Further Proceedings. This decision shall be used for parolees incarcerated by another state or the federal government.~~

~~-(4) To Schedule for Prerevocation Proceedings. This decision may be used when a parolee is suspected of a serious violation of parole and is within 30 days of discharge from parole. This decision may be used at any other time as appropriate under the facts of the case.~~

~~-(5) To Schedule for Limited Placement Proceedings. This decision shall be used for parolees charged with parole violations which, if true, would not appear sufficiently serious to warrant return to prison for an extended period, but who need placement in a substance abuse treatment control unit. The parolee will ordinarily be released within 90 days, but if further violations occur within the 90 days, full revocation proceedings may be scheduled.~~

~~-(6) To Schedule for Revocation Proceedings: Psychiatric Treatment. This decision shall be used when facts are presented that the parolee is suffering from a mental disorder which substantially impairs his/her ability to maintain him/herself in the community, or which makes him or her a danger to him/herself or others, when necessary psychiatric treatment cannot be obtained in the community. This decision shall be made only after receipt of a written statement from a mental health professional who has conducted a face to face evaluation of the parolee and found the parolee is an individual described in section 3901.19.2(a)(7). This decision shall not be made when violations of another term or condition of parole are charged.~~

~~-(7) To Schedule for Revocation Proceedings. This decision shall be used for parolees charged with parole violations which, if true, would appear sufficiently serious to warrant return to prison.~~

~~-(8) To Dismiss Charges. This decision shall be used to dismiss charges which will not be considered at the scheduled hearing.~~

~~-(9) To Continue on Parole. This decision shall be used to continue a parolee on parole. If done "pending further determination" it may be used for a previously suspended parolee who does not need to be in custody pending a hearing.~~

~~-(10) Reinstate on Parole. This decision shall be made whenever a suspended parolee at large has been arrested in California, has been located in California or is available to return to California from another state or country. It indicates the date the period of parole commences after having been tolled during the period the parolee was at large.~~

~~-(11) To Vacate Early Discharge Date. This decision shall be used in conjunction with the decisions listed in subsections (b)(1)-(7) when a parolee, who was previously granted a discharge date earlier than the statutory maximum discharge date, will discharge on the early discharge date before any action ordered by the parole hearings division can be completed. If an early discharge date is vacated, the statutory maximum discharge date becomes the discharge date.~~

~~-(12) Parole Period Extended Pending Revocation Hearing. This decision shall be used to retain jurisdiction when a parolee charged with a parole violation will discharge prior to a revocation hearing.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000, 3056, 3057, and 3060, Penal Code.~~

~~3901.21.5. Parole and Community Services Division Regional Hearing Coordinator Notification.~~

~~The parole hearings division at the central office calendar shall notify the appropriate parole and community services division hearing coordinator of a decision to order a revocation hearing. The parole and community services division hearing coordinator shall assure that all necessary prehearing procedures are followed including making an attorney determination under sections 3901.27.1 .12 and screening witnesses under section 3901.23.4.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056 and 3057, Penal Code; and Gagnon v. Scarpelli, 411 US 778 (1973).~~

~~3901.21.6. Central Office Hearing Coordinator Notification.~~

~~The parole and community services division hearing coordinator shall notify the central office hearing coordinator of the decision regarding an attorney and witnesses. The central office hearing coordinator shall schedule the hearing and assure that an attorney is appointed if necessary.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056 and 3057, Penal Code; and Gagnon v. Scarpelli, 411 US 778 (1973).~~

~~3901.21.7. Revocation Process Time Limits.~~

~~-(a) General. The time limits specified in this section are intended to facilitate the timely completion of various segments of the revocation process in order to hold the revocation hearing within a reasonable time after the placement of the parole hold. These time limits are directory and do not affect the parole hearings division's jurisdiction to hold a revocation hearing in the event of delay which does not prejudice the parolee.~~

~~-(1) In any case in which the chief administrative hearing officer determines that the time limits have been exceeded and the delay may prejudice the parolee, the parole hearings division's central office calendar shall act to complete the revocation hearing process without further delay or to dismiss the parole violation charges and remove the parole hold.~~

~~-(2) These time limits shall be computed in calendar days. If a date falls on a weekend or holiday, the time limits shall be met on the next working day.~~

~~-(b) Violation Report. The parole violation report, including the unit supervisor review, shall be completed and signed with 13 days of the placement of the parole hold.~~

~~-(c) Advice of Rights to Parolee.~~

~~-(1) General. Upon notification that a revocation hearing has been ordered, the regional hearing coordinator shall notify the parolee in writing of his/her rights within 24 days from the placement of the parole hold. In all cases the parole and community services division hearing coordinator shall obtain a decision from the parolee regarding witnesses and an attorney within four days of serving the parolee with the notification of rights.~~

~~-(d) Notification to Parole Hearings Division. Within 23 days of the placement of the parole hold, the regional hearing coordinator shall notify the central office hearing coordinator that a revocation hearing should be scheduled, if that is the recommendation (see section 3901.21.3). If parole and community services division does not recommend a revocation hearing the violation report shall be forwarded to the central office calendar within 23 days of placement of the hold.~~

~~-(e) Central Office Hearing Coordinator. Upon notification of the decision regarding an attorney or witnesses, the central office hearing coordinator shall appoint an attorney, if necessary, and shall schedule the revocation hearing to be held as provided in subsection (f). The central office hearing coordinator shall notify the regional hearing coordinator of the date and time of the hearing.~~

~~-(f) Hearing. The revocation hearing shall be held within a reasonable time after the placement of the parole hold, unless the parolee waives the hearing pursuant to section 3901.21.8. The parole revocation hearing should be held within 45 days of the date the parole hold is placed.~~

~~-(g) Revocation Hearing: Psychiatric Treatment. If the parole agent determines the parolee cannot be retained locally pending the revocation hearing due to acute psychosis, the parole agent may request authorization from the parole hearings division at its central office calendar for an emergency return pursuant to section 3901.17.6. Transfer of the parolee in no way eliminates the responsibility of the parole agent or the parole and community services division to prepare and to ensure timely conduct of the hearing.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000, 3056, 3057, and 3060, Penal Code; and Morrissey v. Brewer 408 US 471 (1972).~~

~~3901.21.8. Waiver of Hearing.~~

~~-(a) Unconditional Waiver. A parolee may waive the revocation hearing. An unconditional waiver includes a waiver of any right to a personal appearance before the parole hearings division to contest the charges against the parolee but shall not be an admission of guilt. Following an unconditional waiver, the parole hearings division may extend the period of parole up to the statutory maximum (see section 3901.9.6). The parolee may not later request a hearing.~~

~~-(b) Conditional Waiver. A parolee who is undergoing criminal prosecution may conditionally waive the revocation hearing, but retain the option to request a hearing as provided in this subsection. Upon receipt of a signed conditional waiver, the parole hearings division at the central office calendar will determine whether there is good cause to revoke parole. This determination will be made without a hearing or personal appearance by the parolee.~~

~~-(1) If the parole hearings division orders parole revoked and the parolee returned to custody, the parolee then may request a revocation hearing. A hearing request must be received by the parole hearings division no more than 15 days following sentencing or final disposition at the trial court level in the criminal proceedings and no later than two months before expiration of the revocation period ordered by the parole hearings division at the central office calendar.~~

~~-(2) Upon receipt of a hearing request, the parole hearings division shall schedule a revocation hearing. At the hearing the panel may take any appropriate action but may not order the parolee returned to custody for more time than was previously ordered in the conditional waiver action.~~

~~-(c) Revocation Hearing: Psychiatric Treatment. A parolee who is scheduled for a revocation hearing for psychiatric treatment shall not be permitted to waive the revocation hearing.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000, 3056, 3057, and 3060, Penal Code.~~

~~3901.21.9. Prehearing Procedures.~~

~~-The hearing coordinator and the central office hearing coordinator shall assure that: time limits are met; the parolee is advised of his/her rights; the parolee's requests for witnesses are screened; any necessary witnesses are notified of the date, time and place of the hearing; all documentary and physical evidence is disclosed, unless designated confidential under section 3321; requests for continuance are decided under section 3901.21.10; necessary attorney representation is arranged; and the case is otherwise prepared for the hearing.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000, 3056, 3057, and 3060, Penal Code.~~

~~3901.21.10. Parolee Rights and Responsibilities at Revocation and Revocation Extension Hearings.~~

~~-(a) At a revocation or revocation extension hearing, the parolee shall have right to:~~

~~-(1) Receive written notification of the time, date, and place of the hearing.~~

~~-(2) Be present at the hearing and to present his/her testimony.~~

~~-(3) Present relevant documents to the hearing panel. Character evidence and other mitigating evidence not directly related to the parole violation charges should be presented in written form.~~

~~-(4) Receive reasonable assistance in preparing for the hearing. A parolee who is unable to effectively communicate with the panel due to language difficulties or a physical or mental impairment shall be provided with appropriate assistance during the hearing. Parole and community services division staff shall arrange for the necessary assistance prior to the hearing. If assistance has not been arranged and appears necessary during the hearing, the panel shall request that parole and community services division staff provide assistance and, if necessary, continue the hearing.~~

~~-(5) A hearing by an impartial panel.~~

~~-(A) A parolee may request the disqualification of a panel member or a panel member may disqualify him/herself. A panel member shall disqualify him/herself under the following circumstances:~~

~~-1. A close personal relationship exists between the panel member and the parolee, or between any of their immediate family members.~~

~~-2. The panel member was involved in a past incident with the parolee which might cause the panel member to be prejudiced against the parolee. Examples: The panel member was responsible for the arrest of the parolee; the parolee assaulted the panel member or a member of the panel member's family.~~

~~-3. The panel member is prejudiced against or biased in favor of the parolee to the extent that the panel member cannot make an objective decision.~~

~~-(B) The panel shall document the decision on disqualification if the issue has been raised. Disqualification shall not occur solely because a panel member knew the parolee in the past or has made a past decision affecting the parolee.~~

~~-(6) Request a continuance in person on any ground, including that there has been insufficient time to prepare for the hearing. A request prior to the hearing shall be made in writing to parole and community services division staff who shall refer it to the parole hearings division for decision. A request during the hearing shall be made to the hearing panel who shall decide whether to grant the continuance. Any request and reasons for continuances shall be documented. Requests for continuance may be granted for good cause, and only in exceptional cases.~~

~~-(7) The testimony of witnesses pursuant to section 3901.23.4.~~

~~-(8) The use of subpoenas pursuant to section 3901.25.1-8.~~

~~-(9) An attorney pursuant to section 3901.27.1.12.~~

~~-(10) An interpreter at state expense for the parolee or any witnesses who do not speak or understand English.~~

~~-(11) A copy of the tape recorded record of the hearing if requested in writing to the parole hearings division within 120 days of the hearing.~~

~~-(b) At the revocation or revocation extension hearing, the parolee is responsible for the following:~~

~~-(1) Bringing to the attention of the panel any issues pertaining to rights under this section or any failure to comply with these regulations.~~

~~-(2) A parolee may waive any of these rights and any such waiver shall be documented.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3042, 3063.5, and 3063.6, Penal Code; and Gagnon v. Scarpelli 411 US 778 (1972).

~~3901.21.11. Prerevocation Proceedings.~~

~~-(a) General. Prerevocation hearings may be held when a parolee is suspected of a serious violation of parole within 30 days of discharge from parole, and the parole hearings division at the central office calendar has not taken an action to extend the parole period pending the revocation hearing. A prerevocation hearing should be held when a parolee is suspected of a serious violation of parole within 30 days of the parolee's maximum discharge date and is in custody on a parole hold. At the prerevocation hearing the only issue to be decided by the panel is whether there is probable cause to believe the parolee has violated parole as charged. Mitigating circumstances are not at issue at this hearing unless they are so bound up in the offense itself that they cannot be considered separately.~~

~~-(b) Initiating Prerevocation Proceedings. When a parole agent determines that a prerevocation hearing may be necessary under section 3901.21.4(b)(4) the parole agent shall immediately prepare a report specifying the charges and supporting evidence, including the reasons for requesting a prerevocation hearing. If the parole and community services division recommends that a prerevocation hearing should be scheduled the procedures of section 3901.21.4 shall be followed.~~

~~-(c) Oath. At the hearing witnesses shall be required to testify under oath.~~
~~-(d) Parolee Rights. At a prerevocation hearing the parolee shall have the rights provided in section 3901.21.10.~~
~~-(e) Decision. The hearing panel shall make any disposition appropriate to the facts of the case including the following:~~
~~-(1) No Probable Cause Found. If the hearing panel finds no probable cause, the parolee shall be continued on parole. The parole hold shall be removed immediately after the hearing. A hold may be retained until the end of the next working day after the hearing if the panel approves the retention and states its reasons.~~
~~-(2) Charge Dismissed. The charge may be dismissed if there is insufficient information to determine whether there is probable cause or if the interest of justice requires.~~
~~-(3) Probable Cause Found. If the hearing panel determines that there is probable cause, the hearing panel shall order a revocation hearing scheduled. If the parole hearings division at the central office calendar had vacated the parolee's early discharge date (section 3901.21.4(b)(11)) the hearing panel shall set the period of parole at the statutory maximum.~~
NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3000, Penal Code.

3901.21.12. Revocation Hearing Procedures.

~~-(a) General. At the revocation hearing the hearing panel shall decide whether there is good cause to believe a condition of parole has been violated and, if so, the most appropriate disposition. The parolee may offer mitigating circumstances either to the violation charged or to the disposition during the appropriate part of the hearing.~~
~~-(1) If the facts of the violation charged have been settled against the parolee in a criminal prosecution or a probation revocation hearing, the parolee may not contest the facts settled against him but may contest: the fact of a post parole conviction; whether the conviction violated a condition of parole (by law every conviction is a violation of parole); and whether the parolee suffered the conviction. If the facts against the parolee have not been settled in a criminal prosecution or probation revocation hearing, the parolee may contest the violation charged.~~
~~-(2) If the parolee is charged with failing to register under Penal Code section 290, the only factual issues at the revocation hearing are whether the parolee is required to register under Penal Code section 290 and whether the parolee failed to register.~~
~~-(b) Oath. The hearing panel shall require all witnesses to testify under oath.~~
~~-(c) Confidential Information. No decision shall be based upon information that is not available to the parolee unless the information has been designated confidential pursuant to section 3321.~~
~~-(1) The reliability of confidential information to be used shall be established to the satisfaction of the hearing panel. A finding of reliability shall be documented by the hearing panel. A hearing may be continued to establish the reliability of the information or to request that the information be designated as noneconfidential.~~
~~-(2) If confidential information affected a decision, the parolee shall be notified of the reports upon which the panel relied.~~
~~-(d) Record. The parolee shall be provided a copy of the decision which shall specify the decision, information considered, and reasons for the decision.~~
NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000, 3063.5, and 3063.6, Penal Code.

3901.21.13. Parole Revocation Hearing Disposition.

~~The hearing panel shall make any disposition appropriate to the facts of the case including the following:~~
~~-(a) No Violation Found. If the hearing panel finds that the parolee did not commit the violation charged, the parolee shall be continued on parole. If the parole hearings division at the central office calendar had extended the parole period pending the revocation hearing, the panel shall take an action with respect to retention on or discharge from parole.~~
~~-(b) Charge Dismissed. The charge may be dismissed if there is insufficient information to determine whether the charge is true, if the charge will not significantly affect the disposition, or if the interest of justice requires. If all the charges are dismissed in the case of a parolee whose parole period had been~~

~~extended pending the revocation hearing the panel shall discharge the parolee effective the date of the hearing.~~

~~-(e) Violation Found. If the hearing panel determines that the parolee committed the violation charged, the hearing panel shall make the appropriate decision necessary to handle the violation. Examples of disposition are:~~

~~-(1) Continue on Parole. This disposition shall be used when the violation is not sufficiently serious to warrant reimprisonment. The decision to continue on parole may be accompanied by a decision to modify, add, or delete special conditions of parole. This decision cannot be used in the case of a parolee whose parole period had been extended pending the revocation hearing.~~

~~-(2) Local Program. This disposition shall be used when the violation is not sufficiently serious to warrant reimprisonment but does indicate a need for treatment available in a community facility or program. This decision cannot be used in the case of a parolee whose parole period had been extended pending the revocation hearing.~~

~~-(3) Return to Custody. This disposition shall be used when the violation is so serious that reincarceration is necessary or when the violation is the failure to register in a timely manner as required by Penal Code sections 290(g) and 290.2 or when the violation is failure to sign the conditions of parole pursuant to Penal Code section 3060.5. Any time in custody under a parole hold will be credited to the revocation confinement period.~~

~~-(4) Return to Custody Eligible for Work Furlough. This disposition shall be used when each of the following circumstances are applicable:~~

~~-(A) The violation is so serious that reincarceration is necessary.~~

~~-(B) The parolee will be retained in a local facility which will permit parolee participation in work furlough.~~

~~-(C) The panel finds that the parolee may be permitted to participate in work furlough.~~

~~-(5) Refix Discharge Date. If the parole hearings division at the central office calendar had vacated the parolee's early discharge date the hearing panel shall set the period of parole at the statutory maximum.~~

~~-(6) Discharge. If the parole hearings division at the central office calendar had extended the period of parole pending the revocation hearing and the panel determines the violation does not warrant reimprisonment or indicates a need for local treatment only, the panel shall discharge the parolee effective the date of the hearing.~~

~~-(d) Return to Custody Psychiatric Treatment. This disposition shall be used when the sole finding of the panel is that the parolee suffers from a mental disorder which substantially impairs the parolee's ability to maintain him/herself in the community, or which makes the parolee a danger to him/herself or others, and necessary treatment cannot be obtained in the community.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000, 3056, 3057, 3060, and 3060.5, Penal Code.~~

~~3901.21.14. Time in Custody.~~

~~-In no case shall total time in custody before and after revocation proceedings exceed the revocation period specified in section 3901.21.2.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code.~~

~~3901.21.15. Time in Custody for Psychiatric Treatment.~~

~~-(a) If a parolee is ordered revoked and returned to custody, psychiatric treatment, the time in custody shall not be added to the parole period.~~

~~-(b) If, during the revocation period, the parolee's condition changes so that he/she is no longer a person described in section 3901.19.2(a)(7), department staff shall so certify and recommend release of the parolee to the central office calendar. The parole hearings division at the central office calendar shall take action on the recommendation within three working days of receipt of the recommendation.~~

~~-(c) If the parolee is not being actively treated by the department in a psychiatric program or in a treatment program operated by the Department of Mental Health, the department shall immediately submit the case to the central office calendar with its recommendation.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code.~~

~~3901.21.16. Disposition of Holds at Hearings.~~

~~—(a) No Violation. If no violation is found, the parole hold shall be removed immediately after the hearing. The hold may be retained until the end of the next working day after the hearing if the panel approves the retention and states its reasons.~~

~~—(b) Charges Dismissed. If the charges are dismissed, the parole hold shall be removed immediately after the hearing. The hold may be retained until the end of the next working day after the hearing if the panel approves the retention and states its reasons.~~

~~—(c) Violation Found. If a parolee who is undergoing criminal prosecution is ordered returned to custody, the parolee shall be retained in local custody under a parole hold until termination of the prosecution. When the prosecution terminates the parolee shall be returned to prison or referred to the parole hearings division at the central office calendar for modification of the revocation period if the revocation period is almost completed.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3057, Penal Code.~~

~~3901.21.17. Revoked Parolees with New Commitments.~~

~~—(a) If a parolee under the jurisdiction of the parole hearings division is returned to prison as a revoked parolee with a new commitment, department staff shall calculate the revocation release date and the release date for the new commitment. Except as hereinafter provided, if the release date for the new commitment is later than the revocation release date, department staff shall discharge the former term effective upon the revocation release date.~~

~~—(b) Department staff shall not discharge a term imposed for either of the following:~~

~~—(1) A crime in which the prisoner used force or violence or caused serious bodily injury as defined in Penal Code section 243(f)(5) within the meaning of Penal Code section 2962(e).~~

~~—(2) An offense resulting in ineligibility for credits against confinement pursuant to a revocation of parole set forth in Penal Code section 3057(d)(2)(C).~~

~~—(c) If the revocation release date is later than the release date for the new commitment, department staff shall refer the case to the parole hearings division on the miscellaneous proceedings calendar. The parole hearings division shall determine whether to discharge the former term.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000, 3001, and 3057, Penal Code.~~

Subchapter 7, Articles 12 through 17 are repealed.

~~Article 12. Revocation and Revocation Extension Hearings Evidence~~

~~3901.23.1. Admissible Evidence in Revocation and Revocation Extension Hearings.~~

~~—All evidence relevant to the charges or disposition is admissible in parole revocation and parole revocation extension hearings proceedings.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056 and 3057, Penal Code.~~

~~3901.23.2. Documentary Evidence in Revocation and Revocation Extension Hearings.~~

~~—The hearing coordinator shall assure that all relevant documentary evidence is available at the hearing and has been made available to the parolee and his/her attorney prior to the hearing unless designated confidential under section 3321. This evidence includes the violation report, arrest report, special services reports, psychiatric reports, and statements of witnesses. If relevant documentary evidence is not available, the hearing coordinator shall specify in writing what the evidence is and why it is unavailable. Any information from the prisoner or parolee supporting his/her request for an attorney shall not be made available to the hearing panel.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056 and 3057, Penal Code.~~

~~3901.23.3. Physical Evidence in Revocation and Revocation Extension Hearings.~~

~~Physical evidence should not ordinarily be required at a hearing. The hearing coordinator may bring physical evidence to the hearing if: the prisoner or parolee has requested it or it appears necessary for the hearing; institutional security is not endangered; and there is no other means of presenting the information.~~
NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3056, 3057, and 3060, Penal Code.

3901.23.4. Witnesses in Revocation and Revocation Extension Hearings.

~~(a) Request.~~

~~(1) Prisoner or Parolee Request. The prisoner or parolee may request either friendly or adverse witnesses. Ordinarily persons will not be called as witnesses unless the prisoner, parolee, or his/her attorney submits a specific request that the person appear as a witness. The request must be timely, i.e., sufficiently ahead of the hearing to notify the witnesses and to make arrangements to have them present at the hearing.~~

~~(2) Staff Request. If in screening the case prior to a hearing, the hearing coordinator or the parole hearings division at the central office calendar believes that a particular witness is necessary to demonstrate essential facts of the violation, attendance of that witness may be requested by the staff even though the prisoner or parolee has not requested that witness. If such a witness is requested, the hearing coordinator or the central office hearing coordinator shall notify the prisoner, parolee, or his/her attorney.~~

~~(b) Screening. The hearing coordinator shall screen the list of requested witnesses prior to the hearing and may refuse to notify or call witnesses. The hearing coordinator shall document a refusal to notify or call a witness, and the parolee, prisoner, or attorney shall be told of their refusal prior to the hearing.~~

~~(1) Friendly Witnesses. The hearing coordinator may refuse to notify any witness whose testimony is clearly irrelevant or cumulative. If there is any question about the expected testimony, the staff may ask the prisoner, parolee, or his/her attorney to make a written statement which summarizes the expected testimony and states how the testimony would be relevant or non-cumulative. The testimony of character witnesses or other witnesses whose testimony is of a general nature should be presented by means of written statements, letters or affidavits.~~

~~(2) Adverse Witnesses. Great care must be taken in refusing to notify any witness who may be an adverse witness. Staff should be sure that the testimony of the witness is clearly irrelevant before refusing to call the witness. (Examples of irrelevant witnesses include a public official having no knowledge of the violation or witnesses from the trial to relitigate a conviction and the witness has no evidence in mitigation). A requested adverse witness should ordinarily be notified to attend even though the testimony may be cumulative, such as where several persons witnessed the incident.~~

~~(c) Notification.~~

~~(1) Adverse Witnesses. The hearing coordinator is responsible for making every effort to assure the attendance of any requested adverse witness deemed necessary by the hearing coordinator.~~

~~(2) Friendly Witnesses. The hearing coordinator should assist the prisoner or parolee in notifying friendly witnesses if he/she will have any difficulty doing so him/herself and if he/she is not represented by an attorney. If assisted by an attorney, the attorney must be advised that he/she is responsible for notifying friendly witnesses who are not confined in prison. The attorney should notify the hearing coordinator of witnesses so that arrangements can be made to have them enter custodial facilities.~~

~~(3) Documentation. All efforts to locate adverse witnesses shall be documented. Any efforts made to locate friendly witnesses for a prisoner or parolee unassisted by counsel shall also be documented.~~

~~If a witness is located, but refuses to attend, the reason for the refusal shall be documented to give the hearing panel sufficient information to determine whether it is reasonable to excuse the witness' attendance.~~

~~(d) Transportation. Adverse witnesses who need transportation should be transported to the hearing where feasible. Friendly witnesses for a prisoner or parolee without counsel may be given transportation.~~

~~(e) Fearful Witnesses. Adverse witnesses who refuse to attend the hearing either because they would be subject to risk of harm if their identities were disclosed or who, even if their identity is known, fear for their safety should they attend the hearing shall be interviewed by parole and community services division staff prior to the hearing, and their information documented in writing or on tape. The reasons for their fear shall also be documented. The hearing panel shall determine whether there is good cause to excuse a witness' attendance and shall document the decision, including the reasons.~~

~~(f) Interviewing Witnesses. A prisoner, parolee or his/her attorney has a right to speak to possible witnesses, but it is completely within the discretion of an individual witness whether to speak to or disclose~~

~~his/her whereabouts to a prisoner, parolee, or his/her attorney. No attempt should be made by staff to influence the witness' decision.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Morrissey v. Brewer 408 US 471 (1972).~~

Article 13. Subpoenas to Parole Revocation and Revocation Extension Hearings

3901.25.1. Issuance of Subpoenas.

~~Subpoenas may be issued to require the attendance of witnesses or the production of documents at parole revocation or parole revocation extension hearings.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 5058.5, Penal Code; and In re Carroll, 80 Cal.App. 3d 22 (1978).~~

3901.25.2. Request for Subpoenas.

~~(a) Who May Request. The parolee or prisoner, the parolee's/prisoner's attorney, and department staff may request that a subpoena be issued.~~

~~(b) To Whom Made. Requests shall be made directly to the field hearing agent or to the classification and parole representative, as appropriate.~~

~~(c) When Made. The request shall be made at least ten working days prior to the scheduled hearing.~~

~~(d) Subpoena Duces Tecum. A declaration in support of a subpoena duces tecum shall accompany the request for a subpoena duces tecum. The declaration must show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and that the requested witness has possession or control of the documentary evidence.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 5058.5, Penal Code; and In re Carroll 80 Cal.App. 3d 22 (1978).~~

3901.25.3. Criteria for Issuance of Subpoenas.

~~(a) General. The guiding principle in determining whether to issue a subpoena or subpoena duces tecum is the necessity of witness testimony or documentary evidence to the proceedings. To be necessary, witness testimony and documentary evidence must be relevant, material and non cumulative to the parolee's/prisoner's case. This decision can only be made on a case by case basis and cannot be stated in any flat policy or rule. Factors to be considered include:~~

~~(1) Whether the person is an adverse or friendly witness.~~

~~(2) Relevance and materiality of the testimony or documents to the issues to be decided during the fact finding (violation) phase of the hearing.~~

~~(3) Availability of the witness and/or the documents.~~

~~(4) The witness' willingness to appear without a subpoena.~~

~~(5) Whether the parolee/prisoner or the parolee's/prisoner's attorney has made reasonable efforts to produce a material friendly witness.~~

~~(6) Whether the witness resides more than 50 miles outside the county where the hearing will be held.~~

~~(b) Witnesses.~~

~~(1) General. Requests for subpoenas for witnesses shall be screened under the procedures of section 3901.23.4. A request for a subpoena may be denied for any witness whose testimony is clearly irrelevant or cumulative.~~

~~(2) Adverse Witnesses. Requests for subpoenas for adverse witnesses shall ordinarily be granted even though the testimony may be cumulative, such as when several persons witnessed the incident. Fearfulness of an adverse witness shall be considered and may justify denial of a request for a subpoena (see section 3901.23.4(e)).~~

~~(3) Friendly Witnesses. Normally only adverse witnesses will be subpoenaed. The testimony of character witnesses and of other witnesses whose testimony is of a general nature should be presented by means of written statements, letters or affidavits. Subpoenas may be issued for friendly witnesses who can provide relevant and material evidence on behalf of the parolee/prisoner during the fact finding (violation) phase of the hearing but who refuse to appear at the request of the parolee/prisoner or the parolee's/prisoner's~~

~~attorney. The parolee/prisoner or the parolee's/prisoner's attorney may be asked to provide a written statement which summarizes the expected testimony and states how the testimony would be relevant, material, and non-cumulative.~~

~~-(e) Documentary Evidence. Subpoenas duces tecum may be issued for documentary evidence under the control of someone other than the parolee/prisoner, the parolee's/prisoner's attorney, parole and community services division or the parole hearings division. A declaration in support of subpoena duces tecum shall accompany the request for a subpoena duces tecum.~~

~~-(d) At the Time of the Hearing. After the hearing has commenced, the panel may request such subpoenas or subpoenas duces tecum as they deem necessary. The hearing shall be continued and rescheduled for a date at least ten days later.~~

~~-(e) Denial. Denial of a request for a subpoena or a subpoena duces tecum shall be documented and a copy of the decision given to the parolee/prisoner or to the parolee's/prisoner's attorney.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 5058.5, Penal Code; and In re Carroll 80 Cal.App. 3d 22 (1978).~~

3901.25.4. Service of Subpoenas.

~~-(a) General. Process issued under this article extends to all parts of the state.~~

~~-(b) Subpoena. Service of a subpoena may be made in any way authorized by law.~~

~~-(c) Subpoena Duces Tecum. Service of a subpoena duces tecum is made by showing the original and delivering a copy to the person having possession or control of the documentary evidence. A copy of the declaration in support of a subpoena duces tecum shall be delivered with the subpoena duces tecum. Service of a subpoena duces tecum is invalid if the declaration in support of subpoena duces tecum is not served on the person at the same time as the subpoena duces tecum.~~

~~-(d) By Whom Made. Service may be made by any person eighteen years of age or older.~~

~~-(e) Timely Made. Service shall be made no later than two days before the hearing, unless good cause for later service is shown.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 5058.5, Penal Code; and In re Carroll 80 Cal.App. 3d 22 (1979).~~

3901.25.5. Witness Obligation to Comply with Subpoenas.

~~-(a) General. A person is obliged to attend a parole revocation or parole extension hearing as a witness pursuant to a subpoena or a subpoena duces tecum at any place within the county of the person's residence and at any place outside the county of residence which is less than 50 miles from the person's residence. Witnesses shall be paid fees and mileage at the rate provided in Government Code section 68093.~~

~~-(b) Custodian of Records.~~

~~-(1) General. The custodian of records may, upon receiving a subpoena duces tecum, mail a true, legible, and durable copy of all the records described in the subpoena duces tecum. The records shall be accompanied by the affidavit of the custodian.~~

~~-(2) Affidavit of Custodian. The affidavit shall state that the affiant is the custodian of the records and is authorized to certify the records; that the copy is a true copy of the records described in the subpoena duces tecum; and that the records were prepared in the ordinary course of business. If the custodian has none or only part of the records described in the subpoena duces tecum, the custodian shall mail the affidavit and the available records.~~

~~-(3) Attendance Required. The custodian of records shall attend the hearing and produce original records only when the subpoena duces tecum contains a clause to that effect.~~

~~-(c) Failure to Comply. If a witness fails to comply with a subpoena or a subpoena duces tecum, the deputy director may petition the Superior Court in the county in which the hearing is pending for an order compelling compliance.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 5058.5, Penal Code; and In re Carroll 80 Cal.App. 3d 22 (1978).~~

3901.25.6. Quashing of a Subpoena.

~~-(a) General. The parole hearings division, upon request timely and reasonably made, may quash a subpoena or subpoena duces tecum entirely, modify it, or direct compliance with it upon terms or conditions. The request to quash shall be made to the subpoena coordinator at parole hearings division headquarters and shall include specific reasons for the request.~~

~~-(b) Criteria. The parole hearings division shall consider the objections to a subpoena or a subpoena duces tecum in light of all available information. The guiding principles shall be to protect witnesses from unreasonable and oppressive demands and to ensure their safety.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 5058.5, Penal Code; and In re Carroll 80 Cal.App. 3d 22 (1978).~~

~~3901.25.7. Subpoena Authority.~~

~~The parole hearings division has final responsibility for deciding whether to issue a subpoena or a subpoena duces tecum and whether to grant or deny a request to quash a subpoena or a subpoena duces tecum. The parole hearings division may delegate these decisions to department staff.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 5058.5, Penal Code; and In re Carroll 80 Cal.App. 3d 22 (1978).~~

~~3901.25.8. Subpoena-Related Appeals.~~

~~There shall be no appeal of the denial of a request for a subpoena or a subpoena duces tecum or a denial or granting of a request to quash a subpoena or a subpoena duces tecum until after the parole revocation or parole revocation extension hearing.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 5058.5, Penal Code; and In re Carroll 80 Cal.App. 3d 22 (1978).~~

Article 14. Attorney Assistance at Hearings

~~3901.27.1. Attorney Assistance During Hearings.~~

~~Assistance of counsel during revocation and revocation extension hearing proceedings shall be approved if a timely request is made by the prisoner or parolee and the need for counsel is established under sections 3901.27.3 .5. If counsel is approved, counsel shall be appointed for indigent prisoners and parolees.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3057 and 3060, Penal Code; and Gagnon v. Scarpelli 411 US 778 (1972).~~

~~3901.27.2. Request for an Attorney.~~

~~-(a) A prisoner or parolee desiring the assistance of counsel in revocation or revocation extension hearing proceedings must make a request for the assistance of an attorney within four days of receiving the "Note of Right to Hearing."~~

~~-(b) A prisoner or parolee who initially waives counsel but then requests counsel shall be given an attorney determination. A prisoner or parolee who withdraws a request for counsel may not later request counsel.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Scarpelli 411 US 778 (1972).~~

~~3901.27.3. Basic Test of Need for Attorney.~~

~~-(a) The guiding principle in deciding whether the assistance of counsel is needed is fundamental fairness. This decision can only be made on a case by case basis, and cannot be stated in any flat policy or rule.~~

~~-(b) If in any case the prisoner or parolee needs assistance of counsel in order to be treated in a fundamentally fair manner in view of the charges brought and the individual's ability to respond to the charges, counsel should be granted, regardless of the presumption of need discussed in section 3901.27.4.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Scarpelli 411 US 778 (1972).~~

3901.27.4. Presumption of Need for Attorney.

~~-(a) Presumption. A prisoner or parolee is presumably entitled to assistance of counsel if there is a colorable claim that the individual did not commit the violation (see subsection (b)), or if there are substantial mitigating circumstances (see subsection (c)). In either event, and particularly in close cases, the strength of the colorable claim or the mitigating circumstances must be weighed against the prisoner's or parolee's ability to speak for him/herself (see section 3901.27.5).~~

~~-(b) Colorable Claim. A prisoner or parolee who has a colorable claim that he/she is not guilty of the charges is presumably entitled to the assistance of counsel. "Colorable" is defined as seemingly valid or genuine; having an appearance of truth, right or justice; plausible. The claim should have an appearance of truth; it need not be probably true, but merely plausible. Ordinarily, a mere denial of the charges without further information is insufficient to raise a colorable claim. There can be no colorable claim of innocence if the prisoner or parolee has been convicted of the charge in court, or has been found guilty of the charge in probation revocation or disciplinary proceedings. The strength of the colorable claim must be weighed against the prisoner's or parolee's ability to speak for him/herself. If he/she has a colorable claim of denial, he/she is presumably entitled to assistance of counsel unless he/she is particularly capable of speaking for him/herself.~~

~~-(c) Mitigating Circumstances. If there are substantial reasons which justify or mitigate the violation and make revocation or extension inappropriate and the reasons are complex or otherwise difficult to develop or present, the presumption is also raised.~~

~~-(1) Substantial Reasons. Claims in justification or mitigation must not only be colorable, but also substantial. A substantial reason refers to one neither imaginary nor illusive but rather solid, of real worth, real.~~

~~-(2) Makes Revocation or Revocation Extension Inappropriate. The reasons put forward must not only be colorable and substantial but must be such that they make revocation or revocation extension inappropriate. A reason justifying or mitigating an alleged violation will only affect the decision on the need for counsel if proof of its existence will affect the decision whether or not to revoke or rescind.~~

~~-(3) Complex or Otherwise Difficult to Develop or Present. The reasons offered in justification or mitigation must be examined to determine their complexity. If these reasons are not complex or otherwise difficult to develop or present, they do not support a presumption that counsel is needed. There may be situations where circumstances aggravate the character of the violation. Disproving such aggravating circumstances must be considered a process of justification or mitigation. If such aggravating circumstances are complex or otherwise difficult for the prisoner or parolee to meet, it should be presumed that counsel is needed.~~

~~-(4) Mitigating Circumstances. Mitigating circumstances may be presented at the hearing only.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Scarpelli 411 US 778 (1972).~~

3901.27.5. Ability to Speak for Self.

~~-(a) In every case, the prisoner's or parolee's ability to speak for him/herself must be considered. A colorable claim of innocence or a claim of mitigating circumstances must be weighed against the ability to speak for oneself. Even where there is no colorable claim or substantial mitigating circumstances, a prisoner or parolee may be so incapable of speaking for him/herself that counsel ought to be granted.~~

~~-(b) The ability to speak must be evaluated in terms of the charges being alleged. Physical and mental disabilities, age, education, experience, and like factors may show need where ordinarily counsel is not required or may eliminate the need where ordinarily counsel should be provided.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Scarpelli 411 US 778 (1972).~~

3901.27.6. Preliminary and Final Hearings.

~~-Separate attorney determinations should be made for prerevocation and revocation hearings. If an attorney is granted at the prerevocation hearing, an attorney shall be allowed at the revocation hearing unless the prisoner or parolee is convicted of the charge before the final hearing.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Searpelli 411 US 778 (1972).

~~3901.27.7. Information Considered.~~

~~-(a) The interviewer shall consider all relevant information including: the reasons for the request; the report supporting the charges; and the cumulative case summary.~~

~~-(b) If the prisoner or parolee refuses to give reasons for the request, it should be explained that any information provided will not be given to the hearing panel and that the interviewer will not sit on the hearing panel. If the prisoner or parolee persists in his/her refusal, the determination shall be made on the basis of the information available.~~

~~-(c) If it is clear from a review of the documents that the prisoner or parolee is entitled to counsel, a personal interview need not be conducted.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Searpelli 411 US 778 (1972).

~~3901.27.8. Decision for Attorney Assistance.~~

~~-The parole hearings division has final responsibility for deciding whether the prisoner or parolee is to have the assistance of counsel. The parole hearings division may delegate the initial decision to department staff.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Searpelli 411 US 778 (1972).

~~3901.27.9. Indigent Prisoner or Parolee.~~

~~-(a) A written declaration of the prisoner's or parolee's inability to pay for any attorney shall be considered if a request for an attorney is granted. A prisoner or parolee shall be deemed indigent if he/she is financially unable to obtain assistance of counsel.~~

~~-(b) A prisoner or parolee is presumed able to afford an attorney if the prisoner or parolee has \$1,500 or more in cash, institutional trust account, savings account, checking account or any combination of cash and accounts. A prisoner or parolee with \$1,500 must show that he/she has been unable to obtain an attorney before an attorney will be appointed at state expense.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Searpelli 411 US 778 (1972).

~~3901.27.10. Attorney Selection.~~

~~-If request for attorney assistance is approved and indigency demonstrated, counsel shall be provided the prisoner or parolee at state expense. The central office hearing coordinator shall make arrangements for providing the attorney.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Searpelli 411 US 778 (1972).

~~3901.27.11. Hearing Panel Designation.~~

~~-No person who participated in making an attorney determination or reviewing an appeal of a denial of a request for an attorney should be assigned to the hearing panel in that case.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Searpelli 411 US 778 (1972).

~~3901.27.12. Attorney Assistance Appeals.~~

~~—Appeals of denials of attorneys should be handled immediately by telephone to the second level of appeal (see section 3901.5.5).~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057 and 3060, Penal Code; and Gagnon v. Searpelli 411 US 778 (1972).~~

~~Article 15. Warrants of Arrest~~

~~3901.29.1. Authority to Issue Warrants.~~

~~—The deputy director, parole hearings division, may issue warrants ordering a parolee placed or retained in custody as provided in this article.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

~~3901.29.2. Warrants Based on Parole and Community Services Division Request.~~

~~—Parole Suspended. When the parole and community services division or the interstate unit supervisor submits a parole violation report charging that a parolee has absconded or otherwise violated the conditions of parole, the parole hearings division at the central office calendar may decide to order parole suspended. If parole is suspended, the deputy director may issue a warrant.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

~~3901.29.3. Emergency Actions to Issue Warrants (Off-Duty Hours).~~

~~—(a) Off Duty Hours Authorized Staff. The following parole hearings division staff may suspend parole, issue a warrant, or order a parolee placed in custody when there is good cause to believe the parolee has absconded or otherwise violated a condition of parole: deputy director, chief administrative hearing officer, or senior administrative hearing officers, or an administrative hearing officer designated by the deputy director, parole hearings division.~~

~~—(b) Procedure. Parole and community services division shall document the basis for requested emergency action and submit a parole violation report to central office calendar on the first working day thereafter.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

~~3901.29.4. Recall of Warrant.~~

~~—(a) Parole hearings division warrants shall remain in full force and effect until cancelled as a result of: arrest, reinstatement on parole or parole hearings division action.~~

~~—(b) Arrest of Parolee. The deputy director, parole hearings division, shall recall warrants upon notification from the parole and community services division that a parolee subject to a warrant has been taken into custody by the department.~~

~~—(c) Discharge of Absconder. The parole and community services division shall notify the parole hearings division at the central office calendar of the case of any absconder who has been at large for five years. The report shall contain a recommendation to retain as an absconder or to discharge. The parole hearings division at the central office calendar may determine to discharge the absconder. If the parole hearings division at the central office calendar discharges the absconder it shall recall the warrant.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.~~

~~3901.29.5. State and National Warrant Systems.~~

~~—(a) California System. All warrants issued pursuant to sections 3901.29.2 .3 for parolees whose whereabouts are unknown shall be entered in the California warrant system.~~

~~—(b) National Warrant System.~~

~~—(1) Criteria for Entering Warrant in National System. Warrants issued pursuant to sections 3901.29.2 .3 for parolees whose whereabouts are unknown shall be reviewed by the parole hearings division at the central office calendar to determine if the warrant should be entered in the national warrant system (National Criminal Information Center or NCIC). The factors to consider in determining whether to enter the warrant in NCIC include whether the parolee:~~

- ~~-(A) Has a history of prior felony convictions for crimes of violence or for offenses involving weapons, great bodily injury, or sexual assaults;~~
- ~~-(B) Is wanted by other state agencies;~~
- ~~-(C) Was on parole from a term imposed for a violent crime or for multiple offenses;~~
- ~~-(D) May remain on parole at least three months considering the amount of time his/her parole period can be extended;~~
- ~~-(E) Was suspected of having committed other offenses at the time he/she absconded;~~
- ~~-(F) Has no family, employment, or residential ties with California.~~
- ~~-(G) Is likely to have absconded to another state;~~
- ~~-(H) Might be accepted for supervision in another state.~~
- ~~-(I) The parole hearings division shall consider any other relevant information, including the expense of returning a parolee to California.~~
- ~~-(2) Whenever the parole hearings division enters a warrant into NCIC the parole hearings division's suspension order shall indicate the specific reasons the warrant has been entered in that system and include an action to return the parolee to California for revocation proceedings.~~
- ~~-(3) Execution of Warrant. When the warrant is executed the parolee shall be returned to California for revocation proceedings unless there are specific circumstances and substantial reasons that indicate a return would not be in the interests of justice.~~
- ~~-(4) Purging Warrants. If the warrant has not been executed eighteen months after entering it in the NCIC, the parole hearings division shall review the case. If no other jurisdictions have issued warrants since the parole hearings division issued its warrant the parole hearings division shall remove the warrant from NCIC, unless reasons are stated for retaining the warrant.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3060, Penal Code.

Article 16. Multijurisdiction Regulations

3901.31.1. Application of This Article.

~~-The revocation procedures set forth in sections 3901.21.1-3901.25.8 apply to any parolee on parole from a California commitment who is located in California. Except as provided in this article, the revocation procedures set forth in sections 3901.21.1-3901.25.8 apply to any parolee on parole from a California commitment who is being supervised in another state or who absconds to another state.~~

NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057, 3059, 3060, and 3064, Penal Code.

3901.31.2. Absconders from California.

~~-(a) Reporting. The parole and community services division shall report to the parole hearings division at the central office calendar any parolee who absconds. A parolee absconds when the parolee leaves California without permission, does not return to California after leaving with permission or has not been available for contact for thirty days. An absconder report shall be submitted whenever parole and community services division is aware that a parolee has absconded although the parolee may be in the custody of another jurisdiction and the parolee's location known at the time the report is submitted. The report shall indicate the date the parolee absconded or the date parole and community services division determined the parolee absconded.~~

~~-(b) Parole Hearings Division Action. When an absconder report is submitted, the parole hearings division at the central office calendar shall review the report and suspend parole. The date of suspension shall be the date the parolee left California, the date the parolee should have returned to California if out of state with permission, or the date parole and community services division determined he/she absconded. The parole period stops running the date of suspension. The suspend action authorizes the parole hearings division to issue a warrant for the parolee's arrest if the parolee's whereabouts are unknown or to place a California detainer if he/she is in the custody of another jurisdiction.~~

~~-(c) Absconder Located.~~

~~-(1) Reporting. The parole and community services division shall report to the parole hearings division at the central office calendar when an absconder is located. If the absconder is located in California the report shall indicate the date the parolee was located or arrested, whichever is earlier, and the parole period will~~

~~recommence on that date. If the absconder is located in another jurisdiction, the parole period will recommence as provided in subsection (c)(2).~~

~~-(2) Parole Hearings Division Action:~~

~~-(A) Located in California. If the absconder is located in California the provisions of sections 3901.21.1-3901.25.8 shall apply to the revocation procedures. The parole hearings division shall reinstate parole effective the date the parolee is arrested or located, whichever is earlier. If the parole hearings division orders parole revoked, the parolee shall receive credit on the revocation period for any time in custody after the date the parolee is arrested or located, whichever is earlier. If the parolee is arrested under an alias, the reinstatement and credit for time in custody shall commence on the date of arrest even if the department is unaware of the arrest because of the parolee's use of an alias.~~

~~-(B) Located Outside California:~~

~~1. General. If the absconder is located in another jurisdiction the parole hearings division at the central office calendar shall determine whether the parolee should be discharged, referred for supervision in the other jurisdiction or scheduled for revocation proceedings as provided in this subsection. The department report may contain any of these as recommendations.~~

~~2. Discharge. After reviewing the case the parole hearings division may decide to waive the remaining period of parole. This shall be accomplished by reinstating the parolee on parole the date of the parole hearings division action and waiving the remaining period of parole.~~

~~3. Out of State Referral. In determining whether the absconder shall be referred for supervision in the other jurisdiction, the parole hearings division shall consider the following information: the parolee's employment history and stability; the parolee's residential pattern; the parolee's family and community relationships; the parolee's record of absconding from parole. If the parolee is referred for supervision in the other jurisdiction the parolee shall be reinstated and the parole period shall recommence on the date the parole hearings division orders the parolee referred.~~

~~4. Revocation Proceedings Scheduled:~~

~~a. Parolee Signs Waiver. As soon as possible after a parolee is located and a hold placed, parole and community services division staff shall notify the parolee that he/she may unconditionally waive the revocation hearing (section 3901.21.8). If the parolee waives the hearing, the parole hearings division action shall include an action to reinstate the parole period effective the date of the in absentia hearing. If the parole hearings division orders parole revoked the parolee shall receive credit on the revocation period for any time in custody after the effective date of reinstatement.~~

~~b. No Criminal Prosecution. If the parolee is not undergoing criminal prosecution in the other state, the parole hearings division shall order the parolee returned to California for revocation proceedings. The parolee shall be reinstated on parole effective the date the parolee has the in absentia hearing, executes a current waiver of extradition, or the date the court ordered the parolee extradited if he/she contested extradition, whichever occurs first. The parole period commences on the effective date of reinstatement. Unless the parolee signed a waiver, the parolee shall have a revocation hearing upon his/her return to California. If the parole hearings division orders parole revoked the parolee shall receive credit on the revocation period for any time in custody after the effective date of reinstatement.~~

~~c. Criminal Prosecution. If the parolee is undergoing criminal prosecution and executes a waiver his/her parole shall be reinstated as in a, above. If he/she does not execute a current waiver of extradition or does not waive the revocation hearing the parolee shall have a revocation hearing upon return to California as provided in sections 3901.21.1-17. The parole hearings division shall reinstate parole effective on the later of: the date the other jurisdiction notifies parole and community services division that the parolee can be returned to California because the criminal prosecution has terminated, or the date the parolee executes a current waiver of extradition. The parole period commences on the effective date of reinstatement. If the parole hearings division ordered parole revoked, the parolee shall receive credit on the revocation period for any time in custody after the effective date of reinstatement. When the prosecution terminates, the parole hearings division shall review the decision to revoke or to schedule for revocation in light of the disposition at the criminal proceedings. The parole hearings division may reaffirm its earlier action, discharge the parolee, or modify the revocation period, if any.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057, 3059, 3060, and 3064, Penal Code; and In re Shapiro 14 Cal. App. 3d 711 (1975).~~

~~3901.31.3. Multijurisdiction Parolees Who Abscond.~~

~~-(a) Reporting. When the interstate unit receives information that a multijurisdiction parolee has absconded, a report shall be submitted to the parole hearings division at the central office calendar. A multijurisdiction parolee absconds when he/she leaves the supervising state without permission, he/she does not return to the supervising state after leaving with permission, or he/she is unavailable for contact in the supervising state for more than 30 days. An absconder report shall be submitted whenever it is clear that the parolee absconded although he/she is in custody or his/her location is known at the time the report is submitted. The report shall indicate the date the parolee absconded or the date the Interstate Unit determined he/she absconded.~~

~~-(b) Parole Hearings Division Action. When an absconder report is submitted, the parole hearings division at the central office calendar shall review the report and suspend parole. The date of suspension shall be the date the parolee left the supervising state, the date the parolee should have returned to the supervising state if he/she was granted a temporary leave or the date the interstate unit determined he/she absconded. The parole period stops running on the date of the suspension. The suspend action authorizes the parole hearings division to issue a warrant for the parolee's arrest if the parolee is in the custody of another jurisdiction.~~

~~-(c) Absconder Located:~~

~~-(1) Reporting. The interstate unit shall report to the parole hearings division at the central office calendar when a multijurisdiction absconder is located.~~

~~-(2) Parole Hearings Division Action. If the parolee is located in the supervising state the parole hearings division shall reinstate parole effective the date he/she was located. The parole period shall commence on the effective date of reinstatement. The parole hearings division shall also determine whether to order revocation proceedings or continue the parolee on parole. If the parole hearings division orders revocation proceedings the procedures in section 3901.31.4 shall apply.~~

~~-(A) If the parolee is located in California, the parole hearings division shall reinstate parole on the date of his/her arrest or location in California, whichever is earlier. All the procedures of sections 3901.21.1 3901.25.8 shall apply to revocation procedures in this case.~~

~~-(B) If the parolee is located in a state other than California or the supervising state the procedures of section 3901.31.2(c)(2) shall apply.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057, 3059, 3060, and 3064, Penal Code.~~

3901.31.4. Revocation of Multijurisdictional Parolees.

~~-(a) General. The parole hearings division may revoke the California parole of any cooperative or concurrent parolee. The six month or one year maximum confinement pursuant to revocation shall be computed from the date the other jurisdiction places a parole hold for California.~~

~~-(b) Reporting Parole Violations. The interstate unit shall report to the parole hearings division at the central office calendar any parolee who is reasonably believed to have engaged in any of the conduct listed in section 3901.19.2 or who meets the criteria of section 3901.17.2. The provisions of sections 3901.19.3 .6 apply to the submission of reports for multijurisdiction parolees.~~

~~-(c) Parole Hearings Division Action:~~

~~-(1) Issue Warrant. The parole hearings division shall review the information to determine if a warrant should be issued to place or retain the parolee in custody. In making the warrant decision the parole hearings division shall consider the factors listed in sections 3901.17.2 .3.~~

~~-(2) Revocation Proceedings. The parole hearings division shall review the information to determine whether the parolee should be scheduled for revocation proceedings or continued on parole.~~

~~-(A) If the parolee is scheduled for revocation proceedings the provisions of section 3901.21.8 apply. If the parolee does not waive the revocation hearing or requests a hearing after signing a conditional waiver, the interstate unit will arrange for officials of the receiving state to conduct a revocation hearing. The receiving state's recommendations as to good cause shall be referred to the parole hearings division. The receiving state may make any recommendation listed in section 3901.21.12. The parole hearings division shall review the other state's recommendation and make the decision concerning good cause.~~

~~-(B) If the decision is to return the parolee to custody, the parolee shall be returned to California as soon as possible if he/she is not undergoing criminal prosecution in the receiving state. If he/she is undergoing criminal prosecution, the parolee shall be retained in custody under a parole hold in the other state. When~~

~~the criminal prosecution terminates, the parole hearings division shall review the case to determine whether the parolee should be returned to California to complete any time remaining on the revocation time, the revocation order should be modified to the amount of time already served, or the parolee should be discharged. In no event will the California hold be retained for longer than six months or one year from the date the hold was placed.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Sections 3057, 3059, 3060 and 3064, Penal Code; and In re Shapiro 14 Cal.App. 3d 711 (1975).~~

Article 17. Parole Revocation Extension Procedures

3901.33.1. Parole Revocation Maximum Term.

~~Confinement pursuant to a revocation of parole, in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in section 3901.33.3.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3057, Penal Code.~~

3901.33.2. Release to Parole.

~~Following a return to custody term of confinement pursuant to a parole revocation or a parole revocation extension, and without a new commitment to prison, a parolee shall be released to parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Penal Code section 3000 which was unexpired at the time of each revocation.~~

~~NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3057, Penal Code.~~

3901.33.3. Parole Violation Extension Procedures.

~~(a) General. Notwithstanding the provisions of section 3901.33.1, the parole hearings division may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation.~~

~~(b) Reportable In Custody Misconduct. Upon discovery of a parolee's misconduct, the institution or county jail/holding facility staff will determine whether or not the conduct is reportable to the parole hearings division as conduct for which revocation custody time may be extended under Penal Code section 3057(e).~~

~~(c) Reporting. Department/County jail staff shall present the parolee's misconduct to the parole hearings division. Reports of misconduct shall be forwarded whether or not the underlying conduct has been adjudicated by the department.~~

~~(1) Institutional staff shall prepare and present their cases to any available administrative hearing officer for screening and disposition of the case at the institution where the parole violator is housed.~~

~~(2) County jail cases will be forwarded to the regional headquarters, parole and community services division, where they will be presented to an administrative hearing officer for screening and disposition.~~

~~(d) Extension Pending Hearing. In any misconduct case in which the parolee is within 45 days of his/her re release date, and where there is no administrative hearing officer personally available, staff shall report the misconduct by telecopier to the parole hearings division central office calendar for immediate action requesting that the parolee's re release date be extended for a period not to exceed 30 days for misconduct punishable as a serious disciplinary offense or for a period not to exceed 45 days for misconduct punishable as a misdemeanor or felony. The signature of one commissioner or deputy commissioner shall be required to order the extension pending revocation extension proceedings.~~

~~(e) Urgent Extension Pending Hearing. In those instances wherein the act of misconduct takes place immediately prior to release or during such time as the parole hearings division is closed (holidays, weekends, evenings, etc.), and the release of the parolee/inmate would otherwise take place without an action by the parole hearings division, staff may contact a person specified in section 3901.29.3(a) by phone and these persons may order that the parolee's release be extended without written order. Any telephonic extension so ordered shall be confirmed by the person ordering it in writing on the next working day.~~

~~(f) Screening. Screening (offering and accepting stipulated dispositions) shall be conducted by an administrative hearing officer and an extension period offered commensurate with the degree of seriousness~~

of the misconduct. If the parolee accepts the revocation extension offer, he/she shall sign an unconditional waiver, under the provisions of section 3901.21.8(a). In cases where there is insufficient information to support a good cause finding but the reviewer believes that upon presentation of additional evidence a good cause finding could be made, the matter will be scheduled for a revocation extension hearing and the administrative hearing officer shall notify parole and community services division that additional evidence must be obtained and provided for the revocation extension hearing.

~~-(g) Conditional Waivers. A parolee may sign an conditional waiver under section 3901.21.8(b) in cases where criminal charges are pending relating to the same conduct. Upon disposition of the criminal charges, the parolee may request a hearing or sign an unconditional waiver.~~

~~-(h) Scheduling. All cases requiring an extension hearing shall be scheduled promptly in order to maintain the availability of witnesses. When the revocation release date has been extended pending a hearing, the hearing shall be conducted prior to the extended revocation release date or the misconduct charges will be dismissed.~~

~~-(i) Rights. Parolees pending a revocation extension hearing will be afforded the same rights as parolees pending revocation hearings.~~

~~-(j) Transfer Pending Hearing. Parolees scheduled for revocation extension hearings shall not be transferred from the institution prior to the hearing.~~

~~-(k) Disposition.~~

~~-(l) Multiple Misconduct Charges. Multiple misconduct charges shall be assessed consecutive to each other, and shall not exceed 12 months for all misconduct during one parole revocation period.~~

~~-(2) Disciplinary Rule Violation Schedule. When a hearing panel makes a good cause finding that a prisoner has committed an act of misconduct which is subject to punishment pursuant to Penal Code section 3057, the hearing panel may assess additional time to the prisoner's parole revocation period in accordance with the following schedule:~~

~~-(A) Felonies. Upon a finding of good cause that a prisoner, confined pursuant to a parole revocation, has committed an act of misconduct punishable as a felony, whether or not prosecution is undertaken, the parole hearings division may assess from 0-180 days of additional revocation time. Acts of misconduct which are punishable as felonies include the following:~~

~~-1. Murder, manslaughter or attempted murder.~~

~~-2. Aggravated assault by prisoner.~~

~~-3. Possession or manufacture of any firearm, deadly weapon, or explosive device (includes any sharp instrument).~~

~~-4. Battery on non-prisoner by prisoner.~~

~~-5. Assault with a deadly weapon or caustic substance.~~

~~-6. Rape, sodomy or oral copulation accomplished against victim with force.~~

~~-7. Arson involving the burning of a structure.~~

~~-8. Possession of flammable explosive or combustible material with intent to burn any structure or property.~~

~~-9. Solicitation of murder, assault with a deadly weapon by means of force likely to produce bodily injury, arson, or a forcible sex act.~~

~~-10. Taking of a hostage.~~

~~-11. Escape or attempted escape, with force.~~

~~-12. Escape from any prison, institution, camp or re-entry facility.~~

~~-13. Escape or attempted escape without force from a prison, institution, camp or re-entry facility.~~

~~-14. Willful and intentional destruction of public property valued in excess of \$400 in a state prison or county jail.~~

~~-15. Conspiracy to commit any felony or misdemeanor offense.~~

~~-16. Assault or battery on a peace officer, not involving the use of a weapon.~~

~~-17. Furnishing equipment or aiding and abetting an escape or escape attempt.~~

~~-18. Extortion.~~

~~-19. Bribery.~~

~~-20. Solicitation of extortion, bribery or forgery.~~

~~-21. Arson of land or property of another not involving a structure.~~

~~-22. Forgery, falsification or alteration of any official record or document prepared or maintained by the department which could affect a term of imprisonment.~~

~~-23. Possession of any narcotic, drug or controlled substance in a re-entry facility.~~

- ~~24. Manufacture of alcohol.~~
 - ~~25. Possession of any alcoholic beverage or intoxicating substance, in any prison, institution or camp including a re-entry facility.~~
 - ~~26. Possession of any container, device, contrivance, instrument or paraphernalia intended for unlawfully injecting or consuming narcotics, drugs or alcoholic beverages.~~
 - ~~27. Commission of any felony offense not otherwise mentioned in this schedule.~~
 - ~~(B) Misdemeanors. Upon a finding of good cause to believe that a prisoner, confined pursuant to a parole revocation, has committed an act of misconduct punishable as a misdemeanor, whether or not prosecution is undertaken, the parole hearings division may assess from 0-90 days of additional revocation time. Acts of misconduct which are punishable as misdemeanors include the following:~~
 - ~~1. Participating in a riot, rout or unlawful assembly.~~
 - ~~2. Inciting a riot.~~
 - ~~3. Indecent exposure.~~
 - ~~4. Battery on a prisoner in which no serious bodily injury is inflicted and no weapon is used.~~
 - ~~5. Theft or embezzlement involving funds or property with a value less than \$400.~~
 - ~~6. Intentional destruction of state property valued at less than \$400.~~
 - ~~7. Consensual participation in an act of sodomy or oral copulation.~~
 - ~~8. Gambling in any prison, institution, camp or re-entry facility.~~
 - ~~9. Commission of any misdemeanor offense not otherwise mentioned in this schedule.~~
 - ~~(C) Serious Disciplinary Offenses. Upon a finding of good cause to believe that a prisoner, confined pursuant to a parole revocation, has committed an act of misconduct defined as a serious rule violation pursuant to section 3315, the parole hearings division may assess from 0-30 days of additional revocation time. Serious disciplinary offenses include but are not limited to the following:~~
 - ~~1. Any act committed by a prisoner is a serious disciplinary offense if the act or action of the prisoner is an act of force or violence against another person, a breach of or presents a threat to institution security, a serious disruption of institution operations, the introduction or use of dangerous contraband or controlled substances or an attempt to commit any such act coupled with a present ability to carry out the threat or attempt if not prevented from doing so.~~
 - ~~2. Any act of misconduct which is reportable to the parole hearings division, under section 3901.19.2.~~
 - ~~3. Intentional destruction of state property valued at \$50 or more, or intentional damage to state property requiring more than \$50 to repair or replace.~~
 - ~~4. Hideout or preparation to escape.~~
 - ~~5. Possession of escape paraphernalia.~~
 - ~~6. Possession of money in an amount of five dollars or more without proper authorization.~~
 - ~~7. Acts of disobedience or disrespect which by reason of intensity or context create a potential for violence or mass disruptive behavior.~~
 - ~~8. Willfully inciting or attempting to incite other persons to commit an unlawful act of force or violence.~~
 - ~~9. Refusal or failure to perform work or participate in programs as ordered or assigned.~~
 - ~~10. Participation in a strike or work stoppage.~~
 - ~~11. Mail or visiting violations that create a threat to the safety of any individual or to institutional security, including the introduction of dangerous contraband or a controlled substance, or the obtaining or attempt to obtain a family visit by falsification of information.~~
 - ~~12. The throwing of any liquid or solid substance on a nonprisoner.~~
 - ~~13. Unauthorized possession of official departmental records or documents which could affect any prisoner's sentence.~~
 - ~~14. Refusal to submit to a test for controlled substances.~~
 - ~~15. Late return or failure to return from authorized temporary release.~~
 - ~~16. A pattern of administrative rule violations indicating significant maladjustment, which violations are of increasing seriousness or are of special significance in light of an existing release date.~~
 - ~~17. Involvement in a conspiracy to do any or all of the above.~~
- NOTE: Authority cited: Stats. 1992, ch. 695, sec. 45. Reference: Section 3057, Penal Code.